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May 24 2023CLERK U.S. DISTRICT COURT
DISTRICT OF ARIZONA

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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF ARIZONA

12 United States of America,
13
14 Plaintiff,

15 vs.

16 Keith
17 Dwayne Anderson,
18 Defendant.

No. CR-22-00277-003-PHX-SPL (ESW)

PLEA AGREEMENT

18 Plaintiff, United States of America, and the defendant, DWAYNE ANDERSON,
19 hereby agree to resolve this matter on the following terms and conditions:

20 **1. PLEA**

21 The defendant will plead guilty to Count 6 of the indictment charging the defendant
22 with a violation of 18 United States Code (U.S.C.) §§ 924(a)(1)(A) and 2, False Statement
23 During the Purchase of a Firearm, Aid and Abet, a Class D felony offense.

24 **2. MAXIMUM PENALTIES**

25 a. A violation of 18 U.S.C. §§ 924(a)(1)(A) and 2 is punishable by a maximum
26 fine of \$250,000.00, a maximum term of imprisonment of five years, or both, and a term
27 of supervised release of up to three years. A maximum term of probation is five years,
28 including a minimum term of one year if probation is imposed.

1 b. According to the Sentencing Guidelines issued pursuant to the Sentencing
2 Reform Act of 1984, the Court shall order the defendant to:

3 (1) make restitution to any victim of the offense pursuant to 18 U.S.C.
4 § 3663 and/or 3663A, unless the Court determines that restitution would not be
5 appropriate;

6 (2) pay a fine pursuant to 18 U.S.C. § 3572, unless the Court finds that a
7 fine is not appropriate;

8 (3) serve a term of supervised release when required by statute or when a
9 sentence of imprisonment of more than one year is imposed (with the understanding that
10 the Court may impose a term of supervised release in all other cases); and

11 (4) pay upon conviction a \$100 special assessment for each count to
12 which the defendant pleads guilty pursuant to 18 U.S.C. § 3013.

13 c. The Court is required to consider the Sentencing Guidelines in determining
14 the defendant's sentence. However, the Sentencing Guidelines are advisory, and the Court
15 is free to exercise its discretion to impose any reasonable sentence up to the maximum set
16 by statute for the crime(s) of conviction, unless there are stipulations to the contrary that
17 the Court accepts.

18 **3. AGREEMENTS REGARDING SENTENCING**

19 a. Stipulation: Sentencing Cap. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the
20 United States and the defendant stipulate that the defendant's sentence shall not exceed the
21 low end of the applicable sentencing range as calculated under U.S.S.G. § 1B1.1(a). This
22 stipulated sentencing cap will not change based on departures considered under U.S.S.G.
23 § 1B1.1(b). Nothing in this agreement shall preclude the defendant from moving for a
24 downward departure, variance, or sentence below the cap, or the court from imposing a
25 sentence below the cap.

26 b. Non-Binding Recommendations. The defendant understands that
27 recommendations are not binding on the Court. The defendant further understands that the
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1 defendant will not be permitted to withdraw the guilty plea if the Court does not follow a
2 recommendation.

3 c. Assets and Financial Responsibility. The defendant shall make a full
4 accounting of all assets in which the defendant has any legal or equitable interest. The
5 defendant shall not (and shall not aid or abet any other party to) sell, hide, waste, spend, or
6 transfer any such assets or property before sentencing, without the prior approval of the
7 United States (provided, however, that no prior approval will be required for routine, day-
8 to-day expenditures). The defendant also expressly authorizes the United States Attorney's
9 Office to immediately obtain a credit report as to the defendant in order to evaluate the
10 defendant's ability to satisfy any financial obligation imposed by the Court. The defendant
11 also shall make full disclosure of all current and projected assets to the U.S. Probation
12 Office immediately and prior to the termination of the defendant's supervised release or
13 probation, such disclosures to be shared with the U.S. Attorney's Office, including the
14 Financial Litigation Unit, for any purpose. Finally, the defendant shall participate in the
15 Inmate Financial Responsibility Program to fulfill all financial obligations due and owing
16 under this agreement and the law.

17 d. Acceptance of Responsibility. Pursuant to Fed. R. Crim. P. 11(c)(1)(B), if
18 the defendant makes full and complete disclosure to the U.S. Probation Office of the
19 circumstances surrounding the defendant's commission of the offense, and if the defendant
20 demonstrates an acceptance of responsibility for this offense up to and including the time
21 of sentencing, the United States will recommend a two-level reduction in the applicable
22 Sentencing Guidelines offense level pursuant to U.S.S.G. § 3E1.1(a). If the defendant has
23 an offense level of 16 or more, the United States will move the Court for an additional one-
24 level reduction in the applicable Sentencing Guidelines offense level pursuant to U.S.S.G.
25 § 3E1.1(b).

26 **4. AGREEMENT TO DISMISS OR NOT TO PROSECUTE**

27 a. Pursuant to Fed. R. Crim. P. 11(c)(1)(A), the United States shall dismiss
28 Counts 4 and 5 of the Indictment at the time of sentencing as to this defendant only.

1 b. This agreement does not, in any manner, restrict the actions of the United
2 States in any other district or bind any other United States Attorney's Office.

3 **5. COURT APPROVAL REQUIRED; REINSTITUTION OF PROSECUTION**

4 a. If the Court, after reviewing this plea agreement, concludes that any
5 provision contained herein is inappropriate, it may reject the plea agreement and give the
6 defendant the opportunity to withdraw the guilty plea in accordance with Fed. R. Crim. P.
7 11(c)(5).

8 b. If the defendant's guilty plea or plea agreement is rejected, withdrawn,
9 vacated, or reversed at any time, this agreement shall be null and void, the United States
10 shall be free to prosecute the defendant for all crimes of which it then has knowledge and
11 any charges that have been dismissed because of this plea agreement shall automatically
12 be reinstated. In such event, the defendant waives any and all objections, motions, and
13 defenses based upon the Statute of Limitations, the Speedy Trial Act, or constitutional
14 restrictions in bringing later charges or proceedings. The defendant understands that any
15 statements made at the time of the defendant's change of plea or sentencing may be used
16 against the defendant in any subsequent hearing, trial, or proceeding subject to the
17 limitations of Fed. R. Evid. 410.

18 **6. WAIVER OF DEFENSES AND APPEAL RIGHTS**

19 The defendant waives (1) any and all motions, defenses, probable cause
20 determinations, and objections that the defendant could assert to the indictment or
21 information; and (2) any right to file an appeal, any collateral attack, and any other writ or
22 motion that challenges the conviction, an order of restitution or forfeiture, the entry of
23 judgment against the defendant, or any aspect of the defendant's sentence, including the
24 manner in which the sentence is determined, including but not limited to any appeals under
25 18 U.S.C. § 3742 (sentencing appeals) and motions under 28 U.S.C. §§ 2241 and 2255
26 (habeas petitions), and any right to file a motion for modification of sentence, including
27 under 18 U.S.C. § 3582(c) (except for the right to file a compassionate release motion under
28 18 U.S.C. § 3582(c)(1)(A) and to appeal the denial of such a motion). This waiver shall

1 result in the dismissal of any appeal, collateral attack, or other motion the defendant might
2 file challenging the conviction, order of restitution or forfeiture, or sentence in this case.
3 This waiver shall not be construed to bar an otherwise-preserved claim of ineffective
4 assistance of counsel or of "prosecutorial misconduct" (as that term is defined by Section
5 II.B of Ariz. Ethics Op. 15-01 (2015)).

6 **7. DISCLOSURE OF INFORMATION**

7 a. The United States retains the unrestricted right to provide information and
8 make any and all statements it deems appropriate to the U.S. Probation Office and to the
9 Court in connection with the case.

10 b. Any information, statements, documents, and evidence that the defendant
11 provides to the United States pursuant to this agreement may be used against the defendant
12 at any time.

13 c. The defendant shall cooperate fully with the U.S. Probation Office. Such
14 cooperation shall include providing complete and truthful responses to questions posed by
15 the U.S. Probation Office including, but not limited to, questions relating to:

- 16 (1) criminal convictions, history of drug abuse, and mental illness; and
17 (2) financial information, including present financial assets or liabilities
18 that relate to the ability of the defendant to pay a fine or restitution.

19 **8. FORFEITURE, CIVIL, AND ADMINISTRATIVE PROCEEDINGS**

20 a. Nothing in this agreement shall be construed to protect the defendant from
21 administrative or civil forfeiture proceedings or prohibit the United States from proceeding
22 with and/or initiating an action for civil forfeiture. Pursuant to 18 U.S.C. § 3613, all
23 monetary penalties, including restitution imposed by the Court, shall be due immediately
24 upon judgment, shall be subject to immediate enforcement by the United States, and shall
25 be submitted to the Treasury Offset Program so that any federal payment or transfer of
26 returned property the defendant receives may be offset and applied to federal debts (which
27 offset will not affect the periodic payment schedule). If the Court imposes a schedule of
28 payments, the schedule of payments shall be merely a schedule of minimum payments and

1 shall not be a limitation on the methods available to the United States to enforce the
2 judgment.

3 **9. ELEMENTS**

4 **False Statement During the Purchase of a Firearm, Aid and Abet**

5 **18 U.S.C. §§ 924(a)(1)(A) and 2**

6 To “aid and abet” means to intentionally help someone else commit a crime. To
7 prove a defendant guilty of False Statement During the Purchase of a Firearm by aiding
8 and abetting, the government must prove each of the following beyond a reasonable doubt:

9 On or about December 13, 2021, in the District of Arizona:

10 1. Someone else committed the crime of False Statement During the Purchase
11 of a Firearm;

12 a. A person knowingly made a false statement or representation in
13 connection with the purchase of a firearm;

14 b. The person made the false statement or representation to a licensed dealer,
15 importer, manufacturer, or collector of firearms, as defined in Chapter 44,
16 Title 18 United States Code; and

17 c. The statement pertained to information that the law requires the licensed
18 dealer, importer, manufacturer, or collector to keep.

19 2. The defendant aided, counseled, commanded, induced, or procured that
20 person with respect to at least one element of False Statement During the Purchase of a
21 Firearm;

22 3. The defendant acted with the intent to facilitate the False Statement During
23 the Purchase of a Firearm; and

24 4. The defendant acted before the crime was completed.

25 **10. FACTUAL BASIS**

26 a. The defendant admits that the following facts are true and that if this matter
27 were to proceed to trial the United States could prove the following facts beyond a
28 reasonable doubt:

1 On December 13, 2021, Defendant DWAYNE ANDERSON was a Federal
2 Firearms Licensee (FFL), doing business as 602 Firearms Instruction LLC in
3 Phoenix, Arizona. Defendant DWAYNE ANDERSON met Essa Williams at a gun
4 show, where he told Williams he could assist him with firearm sales by helping him
5 avoid a background check. Defendant DWAYNE ANDERSON gave his business
6 card to Williams, who contacted him a few days later via text. Williams texted
7 Defendant DWAYNE ANDERSON information for a female, in addition to a photo
8 of her ID so Defendant DWAYNE ANDERSON could fill out the Firearms
9 Transaction Record, known as ATF Form 4473, with her information. Defendant
10 DWAYNE ANDERSON filled out the entirety of the ATF Form 4473 himself with
11 the false information of the female to include her signature. Defendant DWAYNE
12 ANDERSON had never met the female, and only saw Williams again when he
13 arrived at Defendant DWAYNE ANDERSON's house in a black Dodge Charger to
14 pick up the firearm.

15 Defendant DWAYNE ANDERSON sold a 9mm Masterpiece Arms Defender 9mm
16 pistol (Serial Number FX28634) to Essa Williams, who paid him \$230 in cash.
17 Defendant DWAYNE ANDERSON knew that Essa Williams provided false
18 identification to Defendant DWAYNE ANDERSON to acquire the firearm.
19 Although Defendant DWAYNE ANDERSON knew that the purchaser of the
20 firearm must fill out the ATF Form 4473, Defendant DWAYNE ANDERSON
21 completed ATF Form 4473 for Essa Williams using the false information. Under
22 the provisions of Chapter 44 of Title 18, United States Code, ATF Form 4473
23 contains information required to be kept by FFLs. Defendant DWAYNE
24 ANDERSON ran the background check on the wrong person from the false
25 identification which had a natural tendency to influence NICS into believing that
26 the firearm could be lawfully sold to the wrong person.

27 At the time of completing the ATF Form 4473, Defendant DWAYNE ANDERSON
28 knew he was using false identification and knew Essa Williams was not providing
his true identification. Defendant DWAYNE ANDERSON kept the ATF Form
4473 in the records of his FFL, 602 Firearms Instruction LLC. On December 13,
2021, Defendant DWAYNE ANDERSON met with Essa Williams and delivered
the Masterpiece Arms Defender 9mm pistol (Serial Number FX28634) to him in
Phoenix, Arizona. Upon completion of the transaction, Essa Williams left with the
firearm.

On December 14, 2021, at approximately 2:06 a.m., Phoenix Police Department
(PPD) officers responded to multiple calls for service of a black Dodge Charger
driving recklessly in the area of 15th Avenue and Pierson Street. This vehicle was
located at 1545 West Camelback Road with the registration returning to Essa
Williams. Williams fled and a foot pursuit ensued. Within a few minutes, an officer
located Williams who pulled out a handgun and shot the officer multiple times. PPD
officers arrested Williams and seized two handguns in the area.

1 The black Dodge Charger registered to Williams was later transported by PPD to be
2 searched pursuant to a search warrant. On December 14, 2021, at approximately
3 6:00 p.m., PPD detectives searched the black Dodge Charger belonging to Williams.
4 During the search, detectives found the black 9mm Masterpiece Arms Defender
5 9mm pistol on the back seat floorboard. On December 14, 2021, ATF traced the
6 black 9mm Masterpiece Arms Defender 9mm pistol and learned that the background
7 check on the ATF Form 4473 for the purchase of this firearm was created by
8 Defendant DWAYNE ANDERSON at approximately 7:15 p.m. Arizona time on
9 December 13, 2021. This black 9mm Masterpiece Arms Defender 9mm pistol was
10 not the firearm that was used to shoot the PPD officer.

11 b. The defendant shall swear under oath to the accuracy of this statement and,
12 if the defendant should be called upon to testify about this matter in the future, any
13 intentional material inconsistencies in the defendant's testimony may subject the defendant
14 to additional penalties for perjury or false swearing, which may be enforced by the United
15 States under this agreement.

16 **APPROVAL AND ACCEPTANCE OF THE DEFENDANT**

17 I have read the entire plea agreement with the assistance of my attorney. I
18 understand each of its provisions and I voluntarily agree to it.

19 I have discussed the case and my constitutional and other rights with my attorney.
20 I understand that by entering my plea of guilty I shall waive my rights to plead not guilty,
21 to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to
22 present evidence in my defense, to remain silent and refuse to be a witness against myself
23 by asserting my privilege against self-incrimination, all with the assistance of counsel, and
24 to be presumed innocent until proven guilty beyond a reasonable doubt.

25 I agree to enter my guilty plea as indicated above on the terms and conditions set
26 forth in this agreement.

27 I have been advised by my attorney of the nature of the charges to which I am
28 entering my guilty plea. I have further been advised by my attorney of the nature and range
of the possible sentence and that my ultimate sentence shall be determined by the Court
after consideration of the advisory Sentencing Guidelines.

1 My guilty plea is not the result of force, threats, assurances, or promises, other than
2 the promises contained in this agreement. I voluntarily agree to the provisions of this
3 agreement and I agree to be bound according to its provisions.

4 I understand that if I am granted probation or placed on supervised release by the
5 Court, the terms and conditions of such probation/supervised release are subject to
6 modification at any time. I further understand that if I violate any of the conditions of my
7 probation/supervised release, my probation/supervised release may be revoked and upon
8 such revocation, notwithstanding any other provision of this agreement, I may be required
9 to serve a term of imprisonment or my sentence otherwise may be altered.


10 This written plea agreement, and any written addenda filed as attachments to this
11 plea agreement, contain all the terms and conditions of the plea. Any additional
12 agreements, if any such agreements exist, shall be recorded in a separate document and
13 may be filed with the Court under seal; accordingly, additional agreements, if any, may not
14 be in the public record.

15 I further agree that promises, including any predictions as to the Sentencing
16 Guideline range or to any Sentencing Guideline factors that will apply, made by anyone
17 (including my attorney) that are not contained within this written plea agreement, are null
18 and void and have no force and effect.

19 I am satisfied that my defense attorney has represented me in a competent manner.

20 I fully understand the terms and conditions of this plea agreement. I am not now
21 using or under the influence of any drug, medication, liquor, or other intoxicant or
22 depressant that would impair my ability to fully understand the terms and conditions of this
23 plea agreement.

24
25 5-15-2023
26 Date

27 
28 DWAYNE ANDERSON
Defendant

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9/5/15/2023
Date

APPROVAL OF THE UNITED STATES

GARY M. RESTAINO
United States Attorney
District of Arizona

Date _____


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ACCEPTANCE BY THE COURT

5/24/2023

Date


HONORABLE STEVEN P. LOGAN
United States District Judge